IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21983 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHUSHMANBEN WD/O UTTAMBHAI NARSINHBHAI MODI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India, order or direction quashing and setting aside the detention

order passed by the Police Commissioner, Surat city at Annexure A. The petition was filed on 27.10.05. The matter was placed for hearing on 28.10.05. This Court has issued Rule returnable within four weeks and the respondents were directed to file appropriate affidavit in reply on service of Rule promplty. Pursuant to the said order Mr Pujari learned APP appears on behalf of the respondents. With the consent of the parties the matter is take up for hearing.

2. Ms. Banna Dutta appears on behalf of the petitioner. She has invited my attention to the order dated 17.10.05 passed by the Police Commissioner, Surat city. Learned advocate has also invited my attention to the order dated 17.10.05 to the grounds supplied by the authority. The grounds reveal that the petitioner has committed four offences. All the four offences are committed at Chowkbazar police station under provisions of the Bombay Police Act.

3. The first offence was committed on 30.7.04 in connection with CR No. 243/04 under section 66 (1) B, 65, A, E of the Bombay Prohibition Act. It was alleged that the petitioner was storing 6 lts of

country liquor bottles valued at Rs 180/-.

4. The second offence was committed on 31.5.05 in CR No. 118/05 under section 66 (1) B, 65 A, E , 116 (1) B of the Bombay Prohibition Act. The petitioner was storing 5 lts of country liquor bottles valued at Rs 150/-.

5. The third offence was committed on 12.6.05 in connection with CR no. 126/05 under section 66 (1) B, 65, A, E of the Bombay Prohibition Act. It was alleged that the petitioner is storing 37 lts of country liquor bottles valued at Rs 1110/-.

6. The fourth offence was committed on 14.8.05 in connection with CR 180/05 under section 66 (1) B, 65, A, E of the Bombay Prohibition Act. It was alleged that the petitioner was storing 16 lts of country liquor bottles valued at Rs 480/-.

7. The learned advocate for the petitioner stated that even if all the four incidents which have been stated in the grounds are to be taken in totality even then there is no violation of public order but

at the most there may be violation of law and order situation.

8. Learned counsel submitted the authority has not properly satisfied to detain the petitioner under the provisions of the PASA for the activity indulged by the petitioner is only under the provisions of Prohibition Act. In support of the aforesaid contention learned counsel has relied the judgement of Apex Court in the case of **Piyush Kantilal V. Commissioner of Police, Ahmedabad city & another AIR 1989 SC 491** and the Division Bench judgement of this Court in **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393** .

9. On the other hand Mr. Pujari has relied upon the order of detention passed therein and the averment made in the grounds in this behalf. He has invited my attention the grounds it will be stated that the petitioner keeping country liquor and selling the same and therefore the activities of the petitioner affects the public order as well as the public health and therefore the authority was justified in passing the order.

10. Having heard the learned counsel for the parties I have perused the record and in my opinion the detaining authority is passed and without there being any credible or cogent material about the detenu. The authority has not properly considered subjective satisfaction as to whether the petitioner has indulged into any such prejudicial or antisocial activities in this behalf.

11. On considering of all factual aspects emerging from the record of the petition and considering the rival submissions of the facts of this case are covered by judgement of the Apex Court Piyush Kantilal (supra) as well as Division Bench of this Court in Ashok Jivraj (supra). In view of this decision there is no question of breach of public order but there may be breach of law and order situation and therefore the authority has not properly arrived at subjective satisfaction of passing the order of detention.

12. The petition is allowed. The order of detention dated 17/10/2005 is quashed and set aside. The detenu Khushmanben wd/o Uttambhai Narsinhbhai Modi is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly.

13. Direct service is permitted.

(K.M.MEHTA, J)

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